

## **DRAFT MINUTES HEARING OFFICER JUNE 19, 2018**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

### **STUDY SESSION 4:30 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Suparna Dasgupta, Principal Planner  
Lee Jimenez, Senior Planner  
Dalton Guerra, Planning Technician  
Cynthia Jarrad, Administrative Assistant II

**There were 6 interested citizens present at the study session.**

- Staff and Hearing Officer discussed overview of the scheduled cases.

### **REGULAR SESSION 5:10 PM**

**Present:**

Vanessa MacDonald, Hearing Officer  
Suparna Dasgupta, Principal Planner  
Lee Jimenez, Senior Planner  
Dalton Guerra, Planning Technician  
Cynthia Jarrad, Administrative Assistant II

**There were 9 interested citizens present at the regular session.**

**Meeting convened at 4:59 PM and was called to order by Ms. MacDonald. She stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by July 3, 2018 at 3:00 PM, to the Community Development Department.**

1. The following was noted:

- **Agenda Item No. 1**

**June 5, 2018 Hearing Officer Minutes**

Vanessa MacDonald, Hearing Officer, stated that the June 5, 2018 Hearing Officer Minutes had been reviewed and were approved.

- 2) Request approval to abate public nuisance items at the **CHUNXIANG XU** property, located at 2244 East Apache Boulevard. The applicant is the City of Tempe. **(CM180206)**

Marvin White, Code Compliance, gave the following overview of the case:

- This property has been an ongoing problem for the city. The property was abated 3 years ago for trash, graffiti, etc.
- He visited the property today and the property is still not in compliance.
- No action has been taken by the applicant besides a small amount of graffiti that has been removed.

Mr. White showed pictures of the property and pointed out the items that are not in compliance.

Ms. MacDonald mentioned that she has also visited the property.

Mr. White stated that he attempted to contact the property owner numerous times for correspondence but never got a response.

Ms. Macdonald asked if there were any members of the audience who wished to address this request. There was no one.

**DECISION:**

Ms. MacDonald approved the request (CM180206) to abate public nuisance items at the CHUNXIANG XU property, located at 2244 East Apache Boulevard.

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- 3) Request a Use Permit to allow a recreational vehicle to be parked in the required front yard setback for the **GARCIA RESIDENCE**, located at 1125 East Bishop Drive. The applicant is Patrick Garcia. **(PL180159)**

Dalton Guerra, Planning Technician, gave the following overview of the case:

- The Garcia Residence is located on lot 174 of the Hughes Acres Unit Two Subdivision located south of East Broadway Road and East of South Rural Road in the R1-6, Single Family Residential District.
- The applicant, Patrick Garcia, is requesting a Use Permit to allow a recreational vehicle to be parked in the required front yard setback.
- To date, staff has received three (3) phone calls, two in opposition and one in support. The two phone calls that were in opposition expressed concern that approval of this Use Permit will set precedence for other property owners to park recreational vehicles in the front yard. One caller stated that he doesn't want the neighborhood to end up looking like a trailer park as a result. He is also concerned that people will use the recreational vehicles as a living space. The caller in support stated that the Recreational Vehicle being parked in the front yard does not bother her and the property owner keeps the front yard and the RV clean.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff cannot support approval of the requested Use Permit.

Ms. MacDonald asked Mr. Guerra if he had an aerial photo of the property with the property lines visible.

Mr. Guerra showed an aerial photo with the property lines and pointed out that the trailer extends about 5 or 6 feet beyond the property line.

Ms. Macdonald clarified that the property line does not begin at the back of the sidewalk, but rather at the property line itself, which Mr. Guerra had just displayed.

Ms. MacDonald asked Mr. Guerra to confirm that the trailer was actually encroaching into the public Right of Way.

Mr. Guerra responded in agreement.

Mr. Garcia, the property owner, stated that he has lived there for 26 years and uses the recreational vehicle strictly for recreational purposes, and no one lives in it when it is not in use. He stated that he cannot park the RV further back because it would hit the overhang of his house. He mentioned that it would be too expensive to park the RV in the rear of the property because of the costs associated with knocking the wall down and putting a gate up. He stated that the RV being parked in the front yard does not obstruct anyone's view, does not obstruct the sidewalk, does not block his neighbor's driveway.

Ms. MacDonald asked Mr. Garcia to confirm the length of the RV at 30 feet.

Mr. Garcia responded that the RV is 21 feet plus an attached 9 foot flatbed trailer that cannot be removed, therefore the RV is 30 feet in total. He mentioned that it is strictly for recreational use and if he cannot obtain the Use Permit he may need to sell it or move because he cannot afford to pay to store it elsewhere.

Ms. MacDonald read a letter from Ronald Brinkman, a neighbor across the street, in support of approval of the requested Use Permit.

Ms. MacDonald asked if there were any members of the audience who wished to address this request.

Mr. James Wasson, Tempe Resident, spoke in support of the requested Use Permit. He mentioned that the property owner is in good standing with him and that the RV does not create an issue.

Mr. Robert Cray, Tempe resident, spoke in support of the requested Use Permit. He mentioned that there is no problem with the RV being there, it does not look trashy, and it is well kept.

Mr. Guerra reviewed the reasons for denial which included lack of compatibility, potential for living in the RV, and potential for nuisance.

Ms. MacDonald stated that she empathizes with the applicant but she has a duty to implement the Zoning and Development Code. She referenced Section 4-602 of the City of Tempe Zoning and Development Code, an RV exceeding 21' in length cannot be in the front yard setback for more than 48 hours at a time within 7 days. She stated that she cannot grant the Use Permit to park on public property. She stated that the application meets 3 of the 5 Use Permit criteria, but 2 of the criteria are not met. She mentioned that staff had done their research on the area and did not find any prior approved Use Permits for a similar request.

**DECISION:**

Ms. MacDonald denied a Use Permit (PL180159) to allow a recreational vehicle to be parked in the required front yard setback for the **GARCIA RESIDENCE**, located at 1125 East Bishop Drive.

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- 5) Review of Compliance with assigned conditions of approval for a Use Permit to allow a massage establishment for **GRACE FOOT REFLEXOLOGY**, located at 6456 South Rural Road. The applicant is Kevin Wu. **(PL160424)**

Lee Jimenez, Senior Planner, gave the following overview of the case:

- Grace Foot Reflexology operates a reflexology business in the Marcos de Niza Plaza located on the southwest corner of East Guadalupe Road and South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District.
- At the hearing held on January 3, 2017, the Hearing Officer approved a Use Permit to allow a massage establishment for the business.
- Approval conditioned the operator to return to the Hearing Officer for a review of compliance with assigned conditions of approval after six months of operating.
- Since the Use Permit became effective, there have been no police calls for service nor commercial complaints against the applicant.
- To date, one phone inquiry was received by staff.
- Based on the information provided by the operator and the police input received, staff supports the continuation of the approved Use Permit. Staff believes the operation conforms to the required criteria and complies with conditions of approval.

Ms. MacDonald asked if there were any members of the audience who wished to address this request. There were none.

Mr. Jimenez stated that there was a caller who thought this business was requesting another Use Permit. Mr. Jimenez informed her that this was a review of compliance with assigned conditions of approval of an existing Use Permit.

Ms. Macdonald asked if the applicant was present. They were not.

**DECISION:**

Ms. Macdonald stated that the business is in compliance with the assigned conditions of approval for a Use Permit to allow a massage establishment for Grace Foot Reflexology, located at 6465 South Rural Road. **(PL160424)**

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- 6) Request a Use Permit (ZUP180052) to allow an amusement business (escape room) for **INFERNO ESCAPE ROOM, LLC**, located at 1415 East University Drive, Suite 105. The applicant is Dustin Schodt. **(PL180132)**

Dalton Guerra, Planning Technician, gave the following overview of the case:

- Inferno Escape Room is proposing to operate in Suite No. 105 of University Plaza located south of East University Drive and west of South McClintock Drive within the GID, General Industrial District.
- The applicant, Dustin Schodt, explains that the nature of the business is for family entertainment, amusement, and team building experiences. The objective is for participants to solve clues to accomplish a certain task in one of three rooms within 60 minutes. The maximum number of occupants for one room is 8 persons.
- Two employees will be on hand during any shift and the proposed hours of operation are 12 pm to 10 pm on Monday-Thursday / 10 am to 12 am Friday-Sunday.
- To date, no public input has been received by staff.
- Based on the information provided by the applicant and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the conditions provided in the staff report.

Ms. MacDonald read the applicant the conditions of approval.

The applicant agreed to the conditions of approval

Ms. MacDonald asked if there were any members of the audience who wished to address this request. There were none.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values.
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the use would be compatible with existing uses.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

**DECISION:**

Ms. MacDonald approved the Use Permit (ZUP180052) to allow an amusement business (escape room) for **INFERNO ESCAPE ROOM, LLC**, located at 1415 East University Drive, Suite 105, subject to the assigned Conditions of Approval as follows:

1. The Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.

2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. Any intensification or expansion of use shall require a new Use Permit.
6. Live entertainment requires a separate Use Permit.
7. The amusement use shall take place inside only. No amusement use will be allowed outside.
8. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 14 days or by (insert date).

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- 4) Request two (2) Use Permit Standards to reduce the required rear and south side yard setbacks by no more than 20% for a sunken ramada for the **CALHOUN RESIDENCE**, located at 11640 South 71st Street. The applicant is Josh Sherwood of Sherwood Outdoors. **(PL180142)**

Lee Jimenez, Senior Planner, gave the following overview of the case:

- The Calhoun Residence is located on Lot 3 of the Saylor Estates subdivision near the southwest corner of south 71st Street and East Carver Road in the AG, Agricultural District.
- The applicant, Josh Sherwood of Sherwood Outdoors, is requesting reductions to the required rear and south side yard setbacks to accommodate the construction of a new sunken ramada adjacent to the proposed swimming pool.
- The ramada will stand 14 feet tall above grade and cover 1,032 square-feet.
- Should the Use Permit Standards be approved, the required rear yard setback will be reduced by 7 feet from 35 feet to 28 feet, and the required south side yard setback will be reduced by 4 feet from 20 feet to 16 feet.
- To date, staff has received one inquiry by phone. The caller lives south of the Calhoun Residence and has no concerns with the Use Permit Standard requests.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff supports this request and believes the application meets the required criteria and will conform to the conditions provided in the staff report.

Mr. Jimenez stated that this request began as a variance but it was withdrawn and the applicant applied for two Use Permits. He stated that there was no opposition at the neighborhood meeting. He showed aerial photos and a site plan to explain the setbacks and scope of work. He explained that variance criteria are more difficult to meet so the Use Permit Standards were a better route for the project.

Mr. Sherwood spoke on behalf of the property owner. He stated that he has been working closely with Planning staff to make both the owner and the City happy.

Ms. Macdonald asked Mr. Sherwood if he had read the conditions of approval. Mr. Sherwood stated he had, and agreed with them.

Ms. MacDonald asked if there were any members of the audience that wished to address this request.

Mr. Praveen Jain, Tempe resident, is the neighbor directly to the west. He stated that he has met with the property owner and has welcomed them into the neighborhood. He hopes they will comply with city requirements and keep the area nice.

Ms. MacDonald noted that this request meets the criteria of the Zoning and Development Code, Section 6-309 D, Use Permit Criteria (in italics):

1. *Any significant increase in vehicular or pedestrian traffic*; Ms. MacDonald stated that this would not create an increase in vehicular or pedestrian traffic.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; Ms. MacDonald did not believe that the project would create a nuisance from any of the items listed.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; Ms. MacDonald did not believe that this project would deteriorate the neighborhood or downgrade property values.
4. *Compatibility with existing surrounding structures and uses*; Ms. MacDonald did believe that the structure would be compatible with existing structures.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; Ms. MacDonald did believe that the property owners would have adequate control of behavior.

#### **DECISION:**

Ms. MacDonald approved both Use Permit Standards to reduce the required rear and south side yard setbacks by no more than 20% for a sunken ramada for the **CALHOUN RESIDENCE**, located at 11640 South 71st Street, subject to the assigned Conditions of Approval as follows:

1. The Use Permit Standards are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit Standards are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

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#### **ANNOUNCEMENTS**

- Ms. MacDonald noted that the next Hearing Officer public hearing is scheduled for Tuesday, July 3, 2018 at 5:00 PM with a Study Session scheduled for 4:30 PM.

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With no further business, the public hearing adjourned at 5:49 PM.

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Prepared by: Dalton Guerra, Planning Technician  
Reviewed by:

A handwritten signature in dark ink, appearing to read 'Suparna St', is written over a light gray rectangular background.

Suparna Dasgupta, Principal Planner  
For Vanessa MacDonald, Hearing Officer

SD:dg